

We do have concerns with the bill and I think one of the concerns that I will speak to today is the same one that Mr. Steinhardt spoke about. That is Section 319, we would approve of the prior draft which allowed for an attorney general's opinion before going to court, I think the reason we feel this way is because, if the average citizen goes to a state agency and asks to see a document and the document is denied him. If he thinks he has to go to court in order to get this document and realizes that there maybe a change that the document will be denied him by the courts, then he has to pay the court costs. I wonder how many citizens in Vermont would be willing to do this, where as if they can go to the attorney general's office there is a chance of the problem being settled there and of no cost citizen seeking out the document. Other than that, I don't think we have anything else to add at this point other than our general support of this bill.

REP. SHEA: Are there any questions, thank you very much.

KIMBERLY CHENEY

I guess most of you know that I wrote most of this bill and we did have a committee that over it as finely as we could to cover the multitude of problems that you have already heard about. The basic purpose of the bill to me is, I have always had the feeling in government and out of it that government is no better than information that flows back and forth between citizens and the government and it is particularly true as government gets bigger it seems to me. So I think there is a real need for this kind of bill, so that the people can find out what is going on. Vermont is one of three states in the country that does not have any legislation

on this subject, which means that we are back in the old common law rules about access to public documents which are very limited. You can only get a public document if the law requires it be kept, that would be a deed or something of that nature. It is very hard to get access under the existing law. Somethings that I will leave for you to show you some of the work that was done on this bill, this is a memo from a law clerk together with a chart which we didn't have done up in a big pictures, but if you want to look at it. It charts all the 50 states with the types of information which is made confidential or access it is guaranteed under their laws, we have tried to consider everything that the other states have considered, vital statistics, criminal investigation, inter-agency memorandum, personnel files, trade secrets, student records, tax payers, real estate appraisals medical and hospital records, adoption, juvenile and alot of other stuff. Of course each one has a different policy choice. I also have some letters from people who have reported to the committee, who indicated their feelings about certain subjects. One of the things that surprised me during the committee hearings was, I thought the working document paper was going to be a big problem for state government people. I didn't find anybody that and we have the commissioner of education, highways and some others, I didn't find anybody that insisted on working document exception. They thought they could live with the idea that what they do is public, with the exceptions we had in the bill. This particular bill has been changed somewhat from my draft, I had made up which I will send to you just a short list so that you will have them before you and I think you will see the purpose of those suggestions. My major criticism of this draft and I don't know how it came about in the procedure section is what has been related to earlier in the testimony, I am a little bit partial to my draft obviously because I wrote it. But my experience in the

attorney generals office was that I really think the attorney general in some aspects really can be a lawyer for the people. His primary job is advising state government, but if you are really going to help people get along with their government, it seems to me that the attorney general has a very strong role to play there and I can't think of a better role for him to play than interpret an act which is going to have alot of balancing to it. When you get down to the little piece of paper and try and tie it in around one of these exceptions, there is alot of judgements that have to be made that go right back to the policy choice in the bill. I think the attorney general is in a unique position to understand both the needs of the government and the needs of the people for information, he is accountable to the people in the electro process and further more he is paid for. You don't need to get a lawyer and you don't need to come through the whole court process. To me, the procedure section here which I think was taken from the Federal Freedom of Information Act, substantially weakens the bill. It encumbers it with enormous amounts of procedures going to the head of the agency and having rights to appeal and time periods and all that kind of thing. Vermont government is just not as big as the federal government, I think we can operate on a simplex systems. Of course, somebody has the right to go to court if they disagree with the attorney general or if the agency disagrees with the attorney general, they are sort of in a bind, the state agency they kind of have to go along with what the attorney general says. Somebody has to speak for the legal views for the state government, so I strongly urge that that be done. On the exceptions there is one more that I would suggest and I have some language which I could send up to you and that is one relating to the collective bargaining. I don't know whether you have had any testimony about this, but I think there should be a provision that clearly states the

specific records related to collective bargaining are not disclosable. Otherwise the public is negotiating out in the open and all the employees have all the advantages of knowing what their hand is. Exception 12 which relates, although it is a dirty word, is basically an executive privilege exception. Who ever changed this draft added, from the elected office holder the term "public agency employee". That addition seems to me to almost wipe out the entire bill, because if you leave in "or public agency employee", concerning formulation of policy, just about everybody in government except perhaps custodial staff is engaged somehow in the formulation of policies. It seems to me that you will completely gut the whole purpose of the bill if those words are left in there. I would take them out and again I can provide you with a little bit of a reworking of this section to make it clear. What its intent was, was to protect the governor and mayors of cities and towns, chairmans of school boards who ever they may be, from their personal files being rifled while they are trying to get information. I think they have to be free to think of crazy ideas and not be embarrassed by them, they can be embarrassed by what they do, but they shouldn't be punished for having crazy ideas that never see the light of day. You have to encourage novel, different thinking otherwise government comes to a stand still. I will be glad to answer any questions, I have loads of files, I have legislation of every state if you want to compare and I think this memorandum will help you.

REP. SHEA: Mr. Cheney, are you saying that you are not the author of the final draft?

MR. CHENEY:H.276, up until you get to the enforcement procedure is my work.

REP. SHEA: After the enforcement procedure, someone else has taken over.

MR. CHENEY: Yes, someone has taken over 318 and took out the whole thing about the attorney generals opinions. I was told that the current attorney general did that but I have no real knowledge of it.

REP. FOSTER: In this bill it is left up to the agency head now under document, suppose he is in doubt and he calls the attorney general to get his opinion, then he gives his opinion to the person who wants the document. Under your system, if the person wanted to appeal that, he would have to go around to the attorney general that already made the decision on it.

MR. CHENEY: I think what would happen, is the citizen would in say to the highway department and say that he wants to see some plans for the future, maybe the initial reaction is, no this is some exception here relating to real estate appraisals and you can't see it. When the citizen says well I see that I can go to the attorney general and I am going to go up to him. The attorney general rights an opinion. Certainly, if the attorney general knows that he is going to have a formal opinion on a giving subject, he is going to be a little bit hesitant about answering questions off the cuff on the telephone if something comes up. He is going to want to see the documents and he is going to want to see what is going on and then I will write you an opinion, because that is what the statute says I have to do.

REP. FOSTER: You mean that he is saying that to the agency head?

MR. CHENEY: Yes.

REP. FOSTER: But suppose he does give the agency head an opinion, when where is a person going to go.

MR. CHENEY: But the press being what it is, I am sure they will keep a very close eye on what goes on, on this bill and I think that will be helpful.

REP. CUTTS: If this had been law last Friday, would it have prevented the 'donnybrook' the legislature got into?

MR. CHENEY: I wouldn't want to get into the position of predicting what 'donnybrook' legislature will or will not get into.

REP. CUTTS: I said what they were in, not what they were going to get into.

MR. CHENEY: You mean on the information that was withheld from the legislature. I haven't read the judicial selection boards statute recently and I don't know whether there is any confidentiality section in there. But if there is, then you would not have access to those documents.

REP. CUTTS: They were available on a vote by the legislature.

REP. ENNIS: What would be the effect, do you think, of Mr. Silver's suggestion of changing that property tax would be on page 4, Section 6 allowing property tax

transfer fees to be available? Do you see that as construing that all tax forms in the property tax right now are confidential.

MR. CHENEY: I would rather not answer that because I don't really know the answer to the question. We drew this exception, broadly to cover mainly income tax and sales tax, which would show a persons income and gross receipts. Some property tax things certainly have to be available and they are filed already in the town clerks office. I wouldn't see any real policy objection to that.

REP. SHEA: Are there any other questions? Thank you very much. Is there anyone else that would like to speak in favor of this bill, if not we will move on to those opposed.

ROBERT STEWART
EXECUTIVE DIRECTOR (OF)
VT. LEAGUE OF CITIES & TOWNS

We are never opposed to any legislation Mr. Chairman. One of my employees put down the fact that we were opposed, we are always for all legislation. We service 240 of Vermonts 246 municipalities. I think the best place to start is the involvement that our organization has had, it is not just the fact that I get up and walk across the room and say we are for this or against it. It is a very hard decision to make and I think we should understand that and I hope you understand that we couch our recommendations on this particular piece of legislation in those terms. We have watched this legislation since the legislation that Mr. Allard introduced with some imminence. Former Attorney General Cheney worked very,